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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,306	11/18/2003	Chia Yung Cheng	2003B123	6939
23455	7590	06/12/2007	EXAMINER	
EXXONMOBIL CHEMICAL COMPANY			CHRISS, JENNIFER A	
5200 BAYWAY DRIVE			ART UNIT	PAPER NUMBER
P.O. BOX 2149			1771	
BAYTOWN, TX 77522-2149				

  

MAIL DATE	DELIVERY MODE
06/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/716,306	CHENG ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jennifer A. Chriss	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 January 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-117 is/are pending in the application.
- 4a) Of the above claim(s) 72-88, 116 and 117 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 – 71 and 89 - 115 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

**DETAILED ACTION**

1. In view of the Appeal Brief filed on 1/29/07, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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3. Claims 1 – 23, 48 – 71 and 99 – 115 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cheng (US 6,342,565).

Cheng et al. is directed to elastic fibers and articles made therefrom (Title).

As to claims 1, 48 and 99, Cheng et al. teach that the composition comprises 5 – 100% first polymeric component and 0 – 95% second polymeric component (column 7, lines 5 – 15). The first component comprises a random copolymer having a narrow compositional distribution (column 5, lines 35 – 45) preferably with propylene sequences (column 6, lines 35 – 45). The heat of fusion of the first component is less than 45 J/g (column 6, lines 20 – 35). The Examiner equates the first component to Applicant's "first component". The second component comprises a propylene that is primarily crystalline (column 10, lines 30 – 45), preferably an isotactic polypropylene homopolymer or propylene copolymer (column 10, lines 45 – 50). Cheng et al. teach that the fibers have a low level of set, preferably less than 130% (column 3, lines 55 – 68 and column 4, lines 1 - 10). Cheng et al. teach that the fibers can be used in melt-blown and spunbonded nonwovens (column 16, lines 35 – 69).

As to claims 2 – 3, 49 – 50, 100 – 101, 107 – 108, Cheng et al. teach that the fibers have a low level of set, preferably less than 130% (column 3, lines 55 – 68 and column 4, lines 1 - 10).

As to claims 4 – 6, 51 – 53, 102 - 104, 109 – 111, Cheng et al. teach that the elongation is up to 400% (column 4, lines 1 – 10).

As to claims 8 and 55, Cheng et al. teach that the first component can have crystallizable stereoregular propylene sequences (column 5, lines 35 – 45), wherein the component is isotactic (column 6, lines 35 – 45).

As to claims 9 – 10 and 56 - 57, Cheng et al. teach that the first component comprises a random copolymer having a narrow compositional distribution (column 5, lines 35 – 45). Cheng et al. teach that the first component comprises ethylene (see claim 6).

As to claims 11 and 58, Cheng et al. teach that the first component comprises a random copolymer having a narrow compositional distribution (column 5, lines 35 – 45) and the melting point distribution is 0 – 105 C (column 6, lines 30 – 35).

As to claims 12 and 59, Cheng et al. teach that the alpha-olefin content of ethylene in the first component is less than 20% by weight (see claim 6).

As to claims 13 – 15, 60 – 62 and 106, Cheng et al. teach that the heat of fusion of the first component is less than 45 J/g (column 6, lines 20 – 35) and the melting point distribution is 0 – 105 C (column 6, lines 30 – 35).

As to claims 16 and 63, Cheng et al. teach that the polydispersity index is between 1.5 – 40, preferably 1.8 – 3 (column 6, lines 45 – 50).

As to claims 18 and 65, Cheng et al. teach that the second component can be made by Ziegler-Natta catalyst or metallocene catalyst systems (column 11, lines 25 – 40).

As to claim 19 and 66, Cheng et al. teach that the polydispersity index is between 1.5 – 40 (column 11, lines 10 – 15).

As to claims 20 and 67, Cheng et al. teach that the melting point of the second component is greater than 110 C (column 10, lines 35 – 45).

As to claims 21 – 23 and 68 - 70, Cheng et al. teach that the composition comprises 5 – 100% first polymeric component and 0 – 95% second polymeric component (column 7, lines 5 – 15) and preferably contains 75 – 98% of the first polymeric component (column 7, lines 10 – 15).

As to claim 71, While it is noted that the claim recites an intended use as an article component of a hygiene product, medical product or a consumer product, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As to claim 113, Cheng et al. teach that, during meltblowing the composition, the composition is made into fibers and then immediately afterwards collected to form a fabric (column 16, lines 35 – 50).

As to claim 114, Cheng et al. teach that the fibers can be crimped (column 16, lines 20 – 35).

As to claim 115, Cheng et al. teach that the fibers can be 7 – 200 mm long (column 16, lines 25 – 35).

Cheng et al. teaches the claimed invention above but fails to teach anisotropic

elongation of the nonwoven fabric and first component having a MFR of 5 – 5000. It is reasonable to presume that the anisotropic elongation of the nonwoven and the first component having a MFR of 5 - 5000 is inherent to Cheng et al. Support for said presumption is found in the use of like materials (i.e. Cheng et al. teach that the composition for use in fibers or nonwoven materials comprises 5 – 100% first polymeric component and 0 – 95% second polymeric component where the first component comprises a random copolymer having a narrow compositional distribution preferably with propylene sequences and has a heat of fusion of less than 45 J/g and a second component comprises a propylene that is primarily crystalline, preferably an isotactic polypropylene homopolymer or propylene copolymer and a low level of set) which would result in the claimed properties. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties would obviously have been present once the Chen et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

### ***Claim Rejections - 35 USC § 103***

4. Claims 24 – 47 and 89 – 98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng (US 6,342,565).

As to claims 24 and 89, Cheng et al. teach that the composition comprises 5 – 100% first polymeric component and 0 – 95% second polymeric component (column 7, lines 5 – 15). The first component comprises a random copolymer having a narrow

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compositional distribution (column 5, lines 35 – 45) preferably with propylene sequences (column 6, lines 35 – 45). The heat of fusion of the first component is less than 45 J/g (column 6, lines 20 – 35). The Examiner equates the first component to Applicant's "first component". The second component comprises a propylene that is primarily crystalline (column 10, lines 30 – 45), preferably an isotactic polypropylene homopolymer or propylene copolymer (column 10, lines 45 – 50). Cheng et al. teach that the fibers have a low level of set, preferably less than 130% (column 3, lines 55 – 68 and column 4, lines 1 - 10).

As to claims 25 – 26 and 90 - 91, Cheng et al. teach that the fibers have a low level of set, preferably less than 130% (column 3, lines 55 – 68 and column 4, lines 1 - 10).

As to claims 27 – 29 and 92 - 94, Cheng et al. teach that the elongation is up to 400% (column 4, lines 1 – 10).

As to claim 31, Cheng et al. teach that the first component can have crystallizable stereoregular propylene sequences (column 5, lines 35 – 45), wherein the component is isotactic (column 6, lines 35 – 45).

As to claims 32 - 33, Cheng et al. teach that the first component comprises a random copolymer having a narrow compositional distribution (column 5, lines 35 – 45). Cheng et al. teach that the first component comprises ethylene (see claim 6).

As to claim 34, Cheng et al. teach that the first component comprises a random copolymer having a narrow compositional distribution (column 5, lines 35 – 45) and the melting point distribution is 0 – 105 C (column 6, lines 30 – 35).

As to claim 35, Cheng et al. teach that the alpha-olefin content of ethylene in the first component is less than 20% by weight (see claim 6).

As to claims 36 - 38, Cheng et al. teach that the heat of fusion of the first component is less than 45 J/g (column 6, lines 20 – 35) and the melting point distribution is 0 – 105 C (column 6, lines 30 – 35).

As to claim 39, Cheng et al. teach that the polydispersity index is between 1.5 – 40, preferably 1.8 – 3 (column 6, lines 45 – 50).

As to claim 41, Cheng et al. teach that the second component can be made by Ziegler-Natta catalyst or metallocene catalyst systems (column 11, lines 25 – 40).

As to claim 42, Cheng et al. teach that the polydispersity index is between 1.5 – 40 (column 11, lines 10 – 15).

As to claim 43, Cheng et al. teach that the melting point of the second component is greater than 110 C (column 10, lines 35 – 45).

As to claims 44 – 46 and 96 - 98, Cheng et al. teach that the composition comprises 5 – 100% first polymeric component and 0 – 95% second polymeric component (column 7, lines 5 – 15) and preferably contains 75 – 98% of the first polymeric component (column 7, lines 10 – 15).

Chen et al. teach the formation of spun-bonded and melt-blown fabrics from the composition described above but fail to teach that the composition is used in a structure that is in the form of a laminate, specifically combinations of spunbonded and meltblown layers. It would have been obvious to one of ordinary skill in the art to create laminates

using the spunbonded and meltblown fabrics of the invention in order expand the number of end uses depending on the desired properties and strength requirements.

Cheng et al. teaches the claimed invention above but fails to teach anisotropic elongation of the nonwoven fabric and first component having a MFR of 5 – 5000. It is reasonable to presume that the anisotropic elongation of the nonwoven and the first component having a MFR of 5 - 5000 is inherent to Cheng et al. Support for said presumption is found in the use of like materials (i.e. Cheng et al. teach that the composition for use in fibers or nonwoven materials comprises 5 – 100% first polymeric component and 0 – 95% second polymeric component where the first component comprises a random copolymer having a narrow compositional distribution preferably with propylene sequences and has a heat of fusion of less than 45 J/g and a second component comprises a propylene that is primarily crystalline, preferably an isotactic polypropylene homopolymer or propylene copolymer and a low level of set) which would result in the claimed properties. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties would obviously have been present once the Chen et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977). Reliance upon inherency is not improper even though the rejection is based on Section 103 instead of 102. *In re Skoner*, et al. (CCPA) 186 USPQ 80.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1 – 71 and 89 - 115 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Chriss whose telephone number is 571-272-7783. The examiner can normally be reached on Monday - Friday 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571 - 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*gpc*

Jennifer Chriss  
June 6, 2007

  
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